

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

ADEWALE OGUNYALE,

Petitioner

v.

//

CIVIL ACTION NO. 1:07CV165
(Judge Keeley)

WAYNE A. PHILLIPS, Warden,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

Before this Court is the issue of whether the pro se petitioner, Adewale Ogunyale ("Ogunyale"), is legally entitled to serve a certain amount of his sentence of incarceration in a halfway house. For the reasons stated below, the Court finds that he is not and **ADOPTS** the Report and Recommendations ("R&R") in its entirety.

I. Procedural Posture

On November 30, 2007, Ogunyale filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. The Court referred this matter to United States Magistrate Judge James E. Seibert for initial screening and an R&R in accordance with Local Rule of Prisoner Litigation 83.09.

After initial review, on December 6, 2007, Magistrate Judge Seibert entered an order directing the respondent to show cause why the petition should not be granted. On January 7, 2008, the respondent filed a motion to dismiss. On January 25, 2008, Ogunyale filed a response and a motion for summary judgment. On

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April 7, 2008, Magistrate Judge Seibert entered an R&R recommending that this Court grant the respondent's motion to dismiss, deny Ogunyale's motion for summary judgment, deny the petition, and dismiss this case with prejudice. On April 15, 2008, Ogunyale filed objections to the R&R.

II. Legal Standard

This Court reviews de novo any portion of an R&R to which any party objects, but may adopt portions of an R&R to which no party objects without substantive review.¹

III. Ogunyale's Objections

In his objection, Ogunyale incorporates the arguments of his motion for summary judgment by reference. He also argues that Magistrate Judge Seibert erred in failing to find that he has an enforceable legal right to spend the last ten percent of his incarceration in a halfway house. He also asserts that the Magistrate Judge factually erred when he found that the halfway houses in question were full. Ogunyale seeks an order from this Court declaring that he is legally entitled to 5.1 months in a halfway house.

¹ A party's failure to object to the Report and Recommendation not only waives its appellate rights on that issue, but also relieves the Court of any obligation to conduct a de novo review of the issue presented. See Thomas v. Arn, 474 U.S. 140, 148-153 (1985); Wells v. Shriners Hosp., 109 F.3d 198, 199-200 (4th Cir. 1997).

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IV. Analysis

All of Ogunyale's arguments boil down to his belief that, pursuant to 18 U.S.C. 3624(c), he is legally entitled to serve the last ten percent of his sentence of incarceration in a halfway house. Upon de novo review, the Court finds that the Magistrate Judge properly interpreted 18 U.S.C. §§ 3624(c), 4081, and 4082 in determining that Ogunyale is not legally entitled to a specific amount of time in a halfway house. Rather, as the Magistrate Judge notes, Ogunyale is merely entitled to have the Bureau of Prisons consider his application for halfway house placement in accordance with the five factors of 18 U.S.C. § 3621(b). The documentation in this case establishes that Ogunyale has already received the review to which he is legally entitled.

Consequently, the Court **ADOPTS** the Report and Recommendation in its entirety (dkt. no. 14), **GRANTS** respondent's motion (dkt. no. 7), **DENIES** Ogunyale's motion (dkt. no. 13), **DENIES** Ogunyale's petition, and **DISMISSES** this case **WITH PREJUDICE**. The Court orders the Clerk to **STRIKE** this case from the Court's docket.

IT IS SO ORDERED.

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The Clerk is directed to mail a copy of this Order to the pro
se petitioner via certified mail, return receipt requested and to
transmit copies of this Order to counsel of record.

Dated: April 22, 2008

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE